

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 145

Introduced by Avery, 28.

Read first time January 09, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to firearms; to amend sections 28-1204.03
2 and 28-1204.04, Reissue Revised Statutes of Nebraska, and
3 section 69-2441, Revised Statutes Cumulative Supplement,
4 2008; to prohibit firearms at schools, colleges, and
5 universities as prescribed; to provide a penalty; to
6 define a term; to change provisions relating to the
7 Concealed Handgun Permit Act; to harmonize provisions;
8 and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1204.03, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 28-1204.03 The Legislature finds that:

4 (1) Increased violence ~~in~~ at schools has become a
5 national, state, and local problem;

6 (2) Increased violence and the threat of violence has a
7 grave and detrimental impact on the educational process in Nebraska
8 schools;

9 (3) Increased violence has caused fear and concern among
10 not only the schools and students but the public at large;

11 (4) Firearms have contributed greatly to the increase of
12 fear and concern among our citizens;

13 (5) Schools have a duty to protect their students and
14 provide an environment which promotes and provides an education in
15 a nonthreatening manner;

16 (6) An additional danger of firearms ~~in~~ at schools is the
17 risk of accidental discharge and harm to students and staff;

18 (7) Firearms are an immediate and inherently dangerous
19 threat to the safety and well-being of an educational setting; and

20 (8) The ability to confiscate and remove firearms quickly
21 from school grounds is a legitimate and necessary tool to protect
22 students and the educational process.

23 Sec. 2. Section 28-1204.04, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 28-1204.04 (1) Any person who possesses a firearm in a

1 school, on school grounds, in a school-owned vehicle, or at a
2 school-sponsored activity or athletic event ~~shall be~~ is guilty of
3 the offense of unlawful possession of a firearm ~~on~~ at a school
4 ~~grounds~~. Unlawful possession of a firearm ~~on~~ at a school ~~grounds~~
5 is a Class II misdemeanor. This subsection shall not apply to (a)
6 the issuance of firearms to or possession by members of the armed
7 forces of the United States, active or reserve, National Guard of
8 this state, or Reserve Officers Training Corps or peace officers
9 or other duly authorized law enforcement officers when on duty
10 or training, (b) firearms which may lawfully be possessed by the
11 person receiving instruction, for instruction under the immediate
12 supervision of an adult instructor, or (c) firearms contained
13 within a private vehicle operated by a nonstudent adult which are
14 not loaded and (i) are encased or (ii) are in a locked firearm
15 rack that is on a motor vehicle. For purposes of this subsection,
16 encased ~~shall mean~~ means enclosed in a case that is expressly made
17 for the purpose of containing a firearm and that is completely
18 zipped, snapped, buckled, tied, or otherwise fastened with no part
19 of the firearm exposed.

20 (2) Any firearm possessed in violation of subsection (1)
21 of this section ~~in a school, on school grounds, in a school-owned~~
22 ~~vehicle, or at a school-sponsored activity or athletic event~~ shall
23 be confiscated without warrant by a peace officer or may be
24 confiscated without warrant by school administrative or teaching
25 personnel. Any firearm confiscated by school administrative or

1 teaching personnel shall be delivered to a peace officer as soon as
2 practicable.

3 (3) Any firearm confiscated by or given to a peace
4 officer pursuant to subsection (2) of this section shall be
5 declared a common nuisance and shall be held by the peace officer
6 prior to his or her delivery of the firearm to the property
7 division of the law enforcement agency which employs the peace
8 officer. The property division of such law enforcement agency shall
9 hold such firearm for as long as the firearm is needed as evidence.
10 After the firearm is no longer needed as evidence it shall be
11 destroyed in such manner as the court may direct.

12 (4) Whenever a firearm is confiscated and held pursuant
13 to this section or section 28-1204.02, the peace officer who
14 received such firearm shall cause to be filed within ten days after
15 the confiscation a petition for destruction of such firearm. The
16 petition shall be filed in the district court of the county in
17 which the confiscation is made. The petition shall describe the
18 firearm held, state the name of the owner, if known, allege the
19 essential elements of the violation which caused the confiscation,
20 and conclude with a prayer for disposition and destruction in such
21 manner as the court may direct. At any time after the confiscation
22 of the firearm and prior to court disposition, the owner of the
23 firearm seized may petition the district court of the county in
24 which the confiscation was made for possession of the firearm. The
25 court shall release the firearm to such owner only if the claim

1 of ownership can reasonably be shown to be true and either (a)
2 the owner of the firearm can show that the firearm was taken from
3 his or her property or place of business unlawfully or without
4 the knowledge and consent of the owner and that such property or
5 place of business is different from that of the person from whom
6 the firearm was confiscated or (b) the owner of the firearm is
7 acquitted of the charge of unlawful possession of a revolver in
8 violation of section 28-1204, unlawful transfer of a firearm to
9 a juvenile, or unlawful possession of a firearm ~~on~~ at a school.
10 ~~grounds.~~ No firearm having significant antique value or historical
11 significance as determined by the Nebraska State Historical Society
12 shall be destroyed. If a firearm has significant antique value
13 or historical significance, it shall be sold at auction and the
14 ~~proceeds deposited in the permanent school fund.~~ shall be remitted
15 to the State Treasurer for distribution in accordance with Article
16 VII, section 5, of the Constitution of Nebraska.

17 Sec. 3. For purposes of sections 28-1204.03 and
18 28-1204.04, school means a public, private, denominational, or
19 parochial elementary, vocational, or secondary school, a private
20 postsecondary career school as defined in section 85-1603, a
21 community college, a public or private college, a junior college, a
22 university, or any other educational institution.

23 Sec. 4. Section 69-2441, Revised Statutes Cumulative
24 Supplement, 2008, is amended to read:

25 69-2441 (1)(a) A permitholder may carry a concealed

1 handgun anywhere in Nebraska, except any: Police, sheriff, or
2 Nebraska State Patrol station or office; detention facility,
3 prison, or jail; courtroom or building which contains a courtroom;
4 polling place during a bona fide election; meeting of the
5 governing body of a county, public school district, municipality,
6 or other political subdivision; meeting of the Legislature
7 or a committee of the Legislature; financial institution;
8 professional or semiprofessional athletic event; building, grounds,
9 vehicle, or sponsored activity or athletic event of any public,
10 private, denominational, or parochial school ~~or private or~~
11 ~~public university, college, or community college;~~ elementary,
12 vocational, or secondary school, a private postsecondary career
13 school as defined in section 85-1603, a community college, a
14 public or private college, junior college, or university, or
15 any other educational institution; place of worship; hospital,
16 emergency room, or trauma center; political rally or fundraiser;
17 establishment having a license issued under the Nebraska Liquor
18 Control Act that derives over one-half of its total income from
19 the sale of alcoholic liquor; place where the possession or
20 carrying of a firearm is prohibited by state or federal law; a
21 place or premises where the person, persons, entity, or entities
22 in control of the property or employer in control of the property
23 has prohibited permitholders from carrying concealed handguns into
24 or onto the place or premises; or into or onto any other place
25 or premises where handguns are prohibited by law or rule or

1 regulation.

2 (b) A financial institution may authorize its security
3 personnel to carry concealed handguns in the financial institution
4 while on duty so long as each member of the security personnel, as
5 authorized, is in compliance with the Concealed Handgun Permit Act
6 and possesses a permit to carry a concealed handgun issued pursuant
7 to the act.

8 (2) If a person, persons, entity, or entities in control
9 of the property or an employer in control of the property prohibits
10 a permitholder from carrying a concealed handgun into or onto the
11 place or premises and such place or premises are open to the
12 public, a permitholder does not violate this section unless the
13 person, persons, entity, or entities in control of the property
14 or employer in control of the property has posted conspicuous
15 notice that carrying a concealed handgun is prohibited in or
16 on the place or premises or has made a request, directly or
17 through an authorized representative or management personnel, that
18 the permitholder remove the concealed handgun from the place or
19 premises. A permitholder carrying a concealed handgun in a vehicle
20 into or onto any place or premises does not violate this section
21 so long as the handgun is not removed from the vehicle while the
22 vehicle is in or on the place or premises. An employer may prohibit
23 employees or other persons who are permitholders from carrying
24 concealed handguns in vehicles owned by the employer.

25 (3) A permitholder shall not carry a concealed handgun

1 while he or she is consuming alcohol or while the permitholder
2 has remaining in his or her blood, urine, or breath any previously
3 consumed alcohol or any controlled substance as defined in section
4 28-401. A permitholder does not violate this subsection if the
5 controlled substance in his or her blood, urine, or breath was
6 lawfully obtained and was taken in therapeutically prescribed
7 amounts.

8 Sec. 5. Original sections 28-1204.03 and 28-1204.04,
9 Reissue Revised Statutes of Nebraska, and section 69-2441, Revised
10 Statutes Cumulative Supplement, 2008, are repealed.